

# RAJASTHAN HIGH COURT

Suo Motu

Vs.

Principal, Chief Conservator

Civil PIL Writ Petition No. 3707 of 2004  
(Anil Dev Singh, C.J. and Krishan Kumar, J.)

27.08.2004

## JUDGEMENT

**Anil Dev Singh, C.J. and Krishan Kumar, J.**

1. Pursuant to the notice dated 25-8-2004 the reports of Divisional Forest Officers of Jodhpur, Pali, Nagaur and Barmer have been presented in Court today. Let the reports be taken on record.

2. The Divisional Forest Officers of Jodhpur, Barmer and Nagaur are present. According to them trees which are cut, removed or felled outside the forest area are beyond the jurisdiction of the Forest Department and they cannot take action in regard thereto. This is a misconception. It appears that definition of the forest produce as occurring in Section 2 (4) of the Rajasthan Forest Act, 1953 has not been taken note of. Section 2 (4) of the Rajasthan Forest Act, 1953 reads as under:-

"2 (4) "forest produce" includes.-

(a) the following whether found in, or brought from a forest or not, that is to say :-

timber, charcoal, caoutchoue, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds and myra, myrabolams, and

(b) the following when found in, or brought from, a forest, that is to say :-

(i) trees and leaves, flowers and fruits and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all

parts of produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts of produce of animals, and

(iv) peat, surface soil, rock and minerals (including lime stone, laterite, mineral oils and all products of mines or quarries)."

3. Thus, it is clear from the definition that timber, charcoal, caoutchoue, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds and myra, myrabolams whether found in the forest or brought from the forest or otherwise falls within the definition of forest produce. Therefore, it is not correct to say that timber or wood which is not brought from the forest is not forest produce. According to Section 2 (8) of the Rajasthan Forest Act, 1953 "timber" includes trees, when they have fallen or have been felled and all wood, whether cut or fashioned or followed out for any purpose or not. Therefore, the word "timber" which is used in Section 2 (4) of the Act when construed in the light of Section 2 (8) thereof would mean any tree or wood whether cut or not and whether brought from the forest or from outside the forest and shall fall within the mischief of Section 2 (4) of the Rajasthan Forest Act, 1953.

4. The Rajasthan Forest (Produce Transit) Rules, 1957 are also relevant. According to Rule 2 which relates to removal of timber produce provides that no timber shall be moved into or from or within any area in the State of Rajasthan except without a pass issued by a forest officer or person duly authorised by or under the rules or otherwise than in accordance with the conditions of such pass or by any route or to any destination other than the route and destination specified in such pass. As per Rule 2 of the Transit Rules any timber which is being moved within the State must be with the permission of the Forest Officer or any other person duly authorized under the Rules.

5. A conjoined reading of Section 2 (4) and Section 2 (8) of the Rajasthan Forest Act, 1953 and Rule 2 of the Rajasthan Forest (Produce Transit) Rules, 1957 leaves no manner of doubt that when any timber including wood etc. is being transported within the State of Rajasthan, a pass is required to be taken from a Forest Officer or a person duly authorized by and under the Rules. This requirement cannot be over looked. In case timber is being moved in violation of Rule 2 of the Rajasthan Forest (Produce Transit) Rules, 1957 the prescribed officers are authorized to take action in accordance with law.

6. Learned counsel for the State has invited our attention to two Single Bench decisions of this Court in *State v. Loonaram*, <sup>1</sup>The learned single Judge held that since it was not proved that timber was being brought from the forest, no prosecution could be launched against the accused. With great amount of respect we do not agree with the view expressed by the learned single Judge in Loonaram's and Valikhan's cases. The decisions go against the very grain of the provisions of Section 2 (4) and Section 2 (8) of the Rajasthan Forest Act, 1953 and Rule 2 of the Rajasthan Forest (Produce Transit) Rules, 1957. It was also held that Khejadi and Babool are not forest produce. This assumption of the learned Single Judge was not correct. As already pointed out forest produce includes various items including timber. Besides forest produce includes any tree which is brought from the forest or from anywhere else. Therefore, it is not correct to say that Khejadi and Babool are not timber. In turn timber includes any tree whether felled or otherwise. Accordingly the judgments rendered by learned Single Judge in Loonaram's and Valikhan's cases are overruled.

7. It appears to us that the persons who are indulging in illegal felling of trees and some of the officials of the administration are not realizing the value of the trees. The trees are extremely important for our existence. They are the outer garments of nature. It is needless to point out that they give oxygen and absorb carbon-di-oxide. They invite rains which are of prime importance to the existence of man. If the trees are lost, it will be very difficult to attract clouds. The trees must be preserved at all costs and we hope and trust that concerned conservators of forests shall prevent illegal felling of trees.

8. We are surprised to find that no record of trees existing in the forest areas is available. Conservators who are present in Court state that they are not able to specify as to how many trees are standing in the forest areas. No survey has so far been conducted. According to them an estimate is made by density method.

9. In case it is possible to count the trees, the same shall be done and in case, according to the respondents this is not possible, they shall give reasons on affidavits.

10. The respondent shall file detailed reply to the writ petition within two weeks. In the meantime, we direct the respondents and the various conservators of forest to prevent felling of trees in the forest areas and trees which are not exempt under the Rajasthan Forest (Produce Transit) Rules, 1957. In so far as *Tecomella Undulata* (Rohida) and *Prosopis Cineraria* (Khejadi) are concerned, felling of these trees shall not be permitted by the respondents.

To come up on 14-9-2004.

Ordered accordingly.

Cases Referred.

1. 1990 RCC 74 1990 RCC 73